

No. 12024-3Lab-67/36512.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XXIV of 1947), the President of India is pleased to publish the following award of the Presiding Officer Industrial Tribunal, Haryana, Chandigarh in respect of the dispute between the workmen and management of M/s Indian Sugar and General Engineering Corporation Yamuna Nagar.

BEFORE SHRI K.L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 59 of 1967

between

The Workmen and the Management of M/s Indian Sugar and General Engineering Corporation, Yamuna Nagar.

Present.—

Shri Dina Nath for the Management.
Shri Madhusudan Saran for the workmen.

AWARD

An industrial dispute having come into existence between the workmen and the management of M/s Indian Sugar and General Engineering Corporation, Yamuna Nagar the parties agreed to have a joint reference of the same to this Tribunal and made an application to the Government for this purpose. In the statement required under rule 3 of the Industrial Dispute Rules, 1958 to accompany the form of application prescribed under sub-section 1 of section 10 of the Industrial Disputes Act, 1947, the parties stated the following specific matters in dispute.

“to abolish contract system in all jobs which are of permanent nature and necessary for the process of manufacture.”.

The Government of Haryana issued notification No. 217/SF-III-Lab-67, dated 14th June, 1967, making a reference of the said dispute to this Tribunal.

On receipt of the reference, usual notices were issued to the parties and in response to the same the workmen filed their statement of claims and the management filed their written statement to the same. In their written statement the management took a preliminary objection that the workman could not raise the dispute in question because they were barred from raising the same by reason of award No. 12044-6-Lab-1-63/23702, dated 25th October, 1963, delivered by Shri Din Dayal Sharma, I.A.S., the then Labour Commissioner, Punjab. They also alleged in their written statement that they were not employing any contract labour on jobs which were of permanent nature and which were necessary for the process of manufacture. The pleadings of the parties gave rise to three issues which were framed on 1st August, 1967 and which are as under :—

1. Whether the workmen cannot raise the dispute in question because of the award published under notification No. 12044-6-Lab-1-63/23702, dated 25th October, 1963 and given by Shri Din Dayal Sharma, I.A.S., Labour Commissioner, Punjab ?
2. Whether the contract labour is actually not being employed on jobs which are of permanent nature and which are necessary for the process of manufacture ?
3. Is the management entitled to lead any evidence on issue No. 2 in view of the express wording of the dispute which has been jointly referred to this Tribunal under Sub-section 2 of section 10 of the Industrial Disputes Act, 1947 ?

Issue Nos. 1 and 3 being preliminary in nature both parties desired that they may be disposed off before evidence is led on issue No. 2. I directed the parties to lead their evidence in respect of issues No. 1 and 3 and argue the said issues on a date which I fixed for this purpose. The management led evidence of one witness only Shri Chuni Lal, Secretary of the concern in question. He proved the award Ex-R-1 and stated that even in 1961, 1962 and 1963 there were several contractors working in the concern. He also proved the settlement which forms the basis of the award ExR-1. The workmen did not lead any evidence but representatives of both parties addressed their arguments to me. My findings regarding them are as under.—

Issue No. 1.—It appears that several specific matters were referred by the parties to the arbitration of Shri Din Dayal Sharma the then Labour Commissioner, Punjab,—vide

Punjab Government Notification No. 390-III-63/1631, dated 19th of January, 1963. Before the award could be given on the said matters the parties entered into a settlement and made an application to the Labour Commissioner to give his award on the basis of the same. In the settlement it was stated that "the union also undertakes not to raise any fresh demand during the currency of the agreement save and except those referring to individual cases." Mr. Sharma gave his award in terms of the said settlement and he also mentioned in the said award that "the union has also undertaken not to raise any fresh demand during the operation of this agreement save and except those of individual cases". The case of the management is that the award of the Labour Commissioner bars the adjudication of the present dispute. It is contended on behalf of the workmen that the said award was inoperative and void in so far as the particular clause in question was concerned. Their case is that 7 specific matters were referred to the arbitrator and he had jurisdiction to decide only those 7 matters. The ability or inability of the union to raise any fresh demand was not one of those 7 matters and the arbitrator could not therefore, give his award with regard to the same. It is further urged by them that the management have relied only upon the award and not upon the settlement and that the award being void the plea of the management must fail on this short ground. It is also urged that even if the settlement is taken into consideration the clause in question does not bar the adjudication of the dispute. The last contention of the workmen is that the management cannot take this plea in view of the fact that parties have agreed to have the specific dispute mentioned in the joint application adjudicated by the Tribunal. After giving my careful consideration to the matter I am of the opinion that the management having agreed to have a joint reference made with regard to the dispute mentioned in the joint application cannot now be allowed to resile from their agreement and to raise a plea that the said dispute cannot possibly be adjudicated. Even if the clause in the award disabling the workmen from raising the dispute in question was held to be valid, the management had the right to waive the benefit of the said clause and to have an adjudication of the dispute raised by the workmen. By making a joint reference they must be deemed to have waived the benefit of the clause now relied upon by them. Anyhow the management cannot be allowed to approbate and re-approbate. They approached the Government with an application stating that the dispute be got adjudicated by means of a reference to the Tribunal. Now when the Government have made a reference of the said dispute on the application of the management itself, the management cannot be allowed to raise a plea that the reference should not have been made by the Government because the dispute was incapable of being raised and adjudicated. In the circumstances, I over rule the plea of the management and decided this issue against them.

Issue No. 3.—As I have stated above the specific matter in dispute which the parties wanted to have adjudicated by this Tribunal was stated by both the parties to be as under :—

"To abolish contract system in all jobs which are of permanent nature and necessary for the process of manufacture."

This was the precise matter which the Government referred to this Tribunal for adjudication. The management cannot now be allowed to raise a plea that they are not engaging any contract labour on jobs which were of permanent nature and necessary for the process of manufacture. It is a question of fact and if the management wanted this question to be decided it should have been made as an item of dispute in the joint reference. In the present reference I am not called upon to adjudicate whether there is any contract labour engaged by the management on jobs which are not of permanent nature and which are not necessary for the process of manufacture. I am called upon only to adjudicate whether the management should be allowed to employ contract labour on jobs which are of permanent nature and which are necessary of the process of manufacture. If there is no such labour engaged on such jobs it will be for the parties to have that matter adjudicated in a reference for which they may jointly apply for or which the parties or any of them may otherwise ask for. In view of the specific matter referred to me I cannot obviously allow the management in these proceedings to lead evidence to show that they are not engaging any such labour. The issue is decided against the management.

Issue No. 2.—Since the parties do not wish to produce any evidence on this issue and the management does not deny that contract labour cannot be allowed to be employed on jobs which are of permanent nature and which are necessary for the process of manufacture, I feel that this issue should also be decided against the management.

The proposition of law that no contract labour can be allowed to be employed on jobs which are of permanent nature and which are necessary for the process of manufacture is now well settled. In Standard Vacuum Refining company of India Ltd., vs Their Workmen,

(1960. II. LLJ. 223) their Lordships of the Supreme Court of India laid down this proposition in the clearest possible terms. In *Shibu Metal Works, Jagadhri vs. Their Workmen* reference No. 5 of 1962 I gave an award as a Presiding Officer of the Industrial Tribunal, Punjab in which I ordered the abolition of contract labour engaged on jobs which were of permanent nature and which were necessary for the process of manufacture. In my award I relied upon the said ruling of the Supreme Court. An appeal by special leave was filed in the Supreme Court against the aforesaid award and their Lordships of the Supreme Court upheld the award,—*vide* their judgement published in 1966-I-LLJ.717. It was clearly laid down there that no contract labour could be allowed to be employed on jobs which were of permanent nature and which were necessary for the process of manufacture.

For the reasons given above I direct that the management would abolish the contract labour employed by them on jobs which are of permanent nature and which are necessary for the process of manufacture and this will be done within three months from the date of the publication of this award, in the official gazette.

No order as to costs.

K. L. GOSAIN
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

Dated 6th December, 1967.

No. 1415, dated Chandigarh, the 6th/7th December, 1967.

The award be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required by Section 15 of the Industrial Disputes, Act, 1947.

K. L. GOSAIN,
Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.